

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

SCOTT MARSHALL,

Movant

v.

CIVIL ACTION NO. 2:05-0046  
(Criminal No. 2:02-00226-05)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending are the movant's motions (1) pursuant to 28 U.S.C. § 2255, filed January 18, 2005, and (2) for transcripts, filed in his criminal case on August 30, 2004.

Movant seeks the vacatur or set aside of his conviction at trial and his resulting sentence. Movant was convicted of one count of conspiracy to distribute cocaine base, in violation of 21 U.S.C. § 846. The applicable Guidelines' range was 210-262 months. Defendant was sentenced to 210 months. The movant's direct appeal was unsuccessful. United States v. Marshall, No. 03-4432 (4th Cir. Oct. 16, 2003). He did not petition the Supreme Court for discretionary review.

The court received the proposed findings and recommendation of the magistrate judge filed on November 23, 2005, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). On December 12, 2005, movant objected.

II.

The movant candidly concedes, as he must, that United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005), practically forecloses his claims under Blakely v. Washington, 542 U.S. 296 (2000) and United States v. Booker, 125 S.Ct. 738 (2005). He apparently persists in his arguments only to preserve the issue in the hope that the Supreme Court might one day overrule Morris. Regardless of how the Supreme Court resolves the issue, the law is presently clear on the matter. The magistrate judge has properly resolved the matter in view of controlling precedent.

Based upon the foregoing, and the proposed findings and recommendation of the magistrate judge, which are hereby adopted and incorporated herein, the court concludes that movant is not entitled to relief and that the section 2255 motion should be denied.

II.

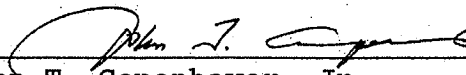
It is, accordingly, ORDERED that the movant's motion pursuant to 28 U.S.C. § 2255 be, and it hereby is, denied. It is further ORDERED that this action be, and it hereby is, dismissed and stricken from the docket.

The court further ORDERS that the movant's motion for transcripts be, and it hereby is, denied.

Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B), movant shall have sixty days after the date of entry of this decree in which to appeal. The failure within that period to file with the Clerk of this court a notice of appeal of this Judgment will render the memorandum opinion and order and this Judgment final and unappealable.

The Clerk is directed to forward copies of this written opinion and order to the movant, all counsel of record, and the magistrate judge.

ENTER: June 26, 2006

  
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John T. Copenhaver, Jr.  
United States District Judge